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OFFICE OF PETITIONS

In re Patent No. 7,150,092	:	
Naoya Hasegawa	:	DECISION ON REQUEST
Issue Date: December 19, 2006	:	FOR
Application No. 10/617,010	:	RECONSIDERATION OF
Filed: July 10, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 9281/4594	:	

This is a decision on the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed January 10, 2007. Patentee requests that the patent term adjustment indicated on the face of the patent be corrected from five hundred seventeen (517) days to six hundred seventy-nine (679) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

Nonetheless, for the reasons stated herein, correction of the patent term adjustment is required. The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **four hundred fifty-two (452)** days.

On December 19, 2006, the above-identified application matured into U.S. Patent No. 7,150,092. The instant request for reconsideration filed January 10, 2007 was timely filed within 2

months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of 517 days. Patentee requests correction of the patent term adjustment to increase the patent term adjustment to 679 days on the basis that the patent issued 3 years and 162 days after the date on which the application was filed. Patentee asserts entitlement to an additional period of adjustment under 37 CFR 1.703(b).

It is agreed that the instant patent issued 3 years and 162 days after its filing date. However, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, the period of delay of 162 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 521 days attributable to grounds specified in § 1.702(a)(1). Thus, no additional period of adjustment beyond the 521 days was entered.

However, a review of the application history reveals that an additional period of reduction pursuant to 1.704(c)(10) should have been entered. Pursuant to 37 CFR § 1.704(c)(10), the filing of a paper after the mailing of the notice of allowance is a failure to engage in reasonable efforts to conclude prosecution. After the mailing of the notice of allowance on May 17, 2006, applicant filed a supplemental Information Disclosure Statement (IDS) on August 21, 2006. This IDS did not include a § 1.704(d) statement. The Office responded to the IDS with the mailing of a supplemental Notice of Allowability on October 24, 2006. Accordingly, a period of reduction of 65 days should have been entered for the period beginning on August 21, 2006 and ending on October 24, 2006.

In view thereof, the patent should have issued with a revised patent term adjustment of 452 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **FOUR HUNDRED FIFTY-TWO (452)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,150,092 B2
DATED : December 19, 2006
INVENTOR(S) : Hasegawa

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (517) days

Delete the phrase "by 517" and insert – by 452 days--